

## TAX APPEAL PROCEDURES FOR ATTORNEYS PRACTICING BEFORE THE MONTANA TAX APPEAL BOARD

**For individuals filing a property tax appeal or other tax appeal on their own behalf, please refer to the additional explanatory materials available on our website at <http://mtab.mt.gov/reference>**

**1. SCOPE.** The following are procedures to be followed in appeals before the Montana Tax Appeal Board (MTAB). Appeals before the Montana Tax Appeal Board are subject to two distinct procedural avenues. Appeals relating to property tax are subject to the statutory criteria set forth in §15-2-301, MCA. Other tax appeals, including income tax appeals, centrally assessed property tax appeals, cigarette tax appeals, etc. are subject to statutory criteria set forth in §15-2-302, MCA. If a question of procedure arises, the Board shall first follow statutory requirements, followed by MTAB procedure and Montana Administrative Procedure, as appropriate.

### **2. FOR PROPERTY TAX HEARINGS PURSUANT TO §15-2-301, MCA.**

The hearing before the Montana Tax Appeal Board is de novo, that is, the Board will gather testimony and evidence regarding the appeal without relying on the CTAB appeal. When available, the Board will have the transcript and the CTAB materials included as part of the record of the Montana Board hearing. Therefore, a party may want to confirm with Board staff as to whether the CTAB materials are part of the record. If no, and if a party wants the Montana Board to consider an exhibit that was submitted at the county tax appeal board hearing, the party must present the exhibit again at the Montana Board hearing. (Occasionally, the CTAB materials are misplaced, or the recording process has malfunctioned.) All testimony shall be given under oath or affirmation. The Board will swear in witnesses before testifying.

### **3. FOR APPEALS PURSUANT TO §15-2-301, MCA OR FOR APPEALS DEEMED INFORMAL UNDER THE MONTANA ADMINISTRATIVE PROCEDURES ACT**

These appeals are subject to the Montana Administrative Procedures Act, and the rules of evidence. The procedure followed by the Board shall be as follows: The appealing party (the taxpayer or the Department of Revenue) will present his case first. At the conclusion of each witness's testimony, the opposing party may ask questions and Board Members may also question the witness. The opposing party then presents his case, and the appealing party may ask questions. In the case of a cross appeal, the party whose appeal was received earliest by this office will present his case first. Both parties will be allowed time for brief closing statements.

**4. SCHEDULING ORDER:** If a hearing is scheduled by the Board for more than three (3) days in length, the parties shall, within 30 days of a scheduling conference or notice of a hearing date, whichever is later, submit to the Board a proposed scheduling order including discovery deadlines and pre-hearing conference deadlines. A sample scheduling order is available on our website.

## **5. MOTIONS.**

- (a) Upon filing a motion, the moving party shall file a brief in support of the motion. The Brief may be accompanied by appropriate supporting documents. Within ten days thereafter, the adverse party shall file an Answer Brief which also may be accompanied by supporting documents. Within ten days thereafter, movant may file a Reply Brief or other appropriate responsive documents.
- (b) Failure to file a brief by the moving party shall be deemed an admission that the motion is without merit and subject the motion to summary ruling. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file will not subject a motion to summary ruling.
- (c) If a party files a motion more than five pages in length or includes attachments, the party shall submit the original motion and any accompanying material as well as three additional copies for members of the Board.
- (d) The Board may order oral argument sua sponte or upon application of a party.
- (e) Unless oral argument is ordered, or unless the time is extended by the Board, the motion is deemed submitted at the expiration of any of the applicable time limits previously set forth. If oral argument is ordered, the motion will be deemed submitted at the close of an argument unless the Board orders additional Briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final Brief.
- (f) Any motions filed after a hearing date is set in the matter shall be filed at least 30 days prior to the initial hearing date to allow the Board time to review the motion and responses prior to the hearing. The Board may consider motions filed less than 30 days before a hearing in an emergency or based on unforeseen circumstances.
- (g) Time computation shall be governed by Rule 6(a), M.R.Civ.P.

## **6. EX PARTE MATTERS.**

- (a) Extension of time to file Briefs, continuation of a hearing on a motion, and other permissible ex parte matters may be granted by order of the Board upon written application.
- (b) The party seeking an Ex Parte Order must file a Written Certification with the Board declaring that opposing party has been contacted and given reasonable notice of:
  - (i) The time and place of the ex parte conference or meeting;
  - (ii) The substance of the order sought;
  - (iii) Whether the party opposes or supports the motion.
- (c) All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form or order.

## **7. FILING OF DISCOVERY - LIMITATIONS.**

- (a) Discovery requests and answers thereto or depositions shall not be routinely filed. When a motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents, depositions, interrogatories,

requests for admissions and answers and responses thereto that the parties intend to introduce into evidence.

(b) Unless otherwise ordered or stipulated, no party may serve on any other party more than 50 interrogatories in the aggregate. Each subpart shall be counted as a separate interrogatory. Additional interrogatories may be submitted for good cause only by leave of the Board.

(c) Unless otherwise ordered, no discovery is available to any party fifteen days prior to the hearing on an appeal.

**8. SUBPOENAS.** The service of subpoenas must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. The method for service of subpoenas, witness fees and mileage shall be the same as required in civil actions in the district courts of Montana. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

### **9. PRE-HEARING ORDER AND PRE-HEARING CONFERENCE.**

(a) Conference: Unless otherwise ordered by the Board, a pre-hearing conference shall be held in all appeals scheduled for three days or more in length.

(b) Order: Not later than five days prior to a pre-hearing conference, the parties shall convene a conference for the purpose of preparing a pre-hearing order. The proposed pre-hearing order shall be presented for signature at the pre-hearing conference. The pre-hearing order shall be substantially in the form of a pre-trial order as provided in Rule 5 of the Uniform District Court Rules insofar as applicable.

In the event of a dispute as to the contents of the order, such dispute shall be presented to the Board for resolution at the pre-hearing conference.

(c) Lists of Exhibits and Witnesses: Not later than 30 days prior to the pre-hearing conference, the parties shall exchange exhibits and a list of witnesses, which shall include a narrative summary of their expected testimony and, in case of an expert, their qualifications and their opinions and the basis for each opinion.

### **10. THE HEARING.**

(a). The hearing shall be conducted pursuant to §15-2-301, MCA, for a property tax appeal or pursuant to §15-2-302, MCA, for a direct appeal. Montana Administrative Procedures may not apply to hearings pursuant to §15-2-301, MCA. The Board, however, will conduct such hearings in a style substantially similar to the rules set forth in the Montana Administrative Procedures Act. Pursuant to §15-2-302, MCA, direct appeals shall be held in accordance with the Montana Administrative Procedures Act.

(b) Any individual may be represented by an attorney, but an attorney is not required. (Section 2-4-105, MCA).

(c) In a property tax appeal pursuant to §15-2-301, MCA, any individual may be represented at the hearing by a spouse or other relative or person who has an interest in, or knowledge of, the property involved in the appeal. To permit adequate cross-examination and ensure that the individual's interest is adequately represented, any person who appears in lieu of the party of record must be fully informed of the case and of all pertinent information, which is known to the party of record. The representative

must be able to prove that he or she has the authority to act on behalf of the individual pursuing the appeal. The Montana Supreme Court has required a corporation to be represented in court by an attorney. *E.g. Audit Serv. Inc. v. Frontier-West Inc.*, 252 Mont. 142, 148, 827 P.2d 1242 (1992); *Continental Realty, Inc. v. Gerry* (1991), 251 Mont. 150, 152 822 P.2d 1083, 1084 (1991). The Montana Supreme Court has also indicated that a non-lawyer may not represent a corporation in an administrative procedure. *See Steele v. MacGregor*, 1998 MT 85, P31, 956 P.2d 1364. The State Bar of Montana has issued an ethics opinion that a hearing examiner in a contested case under MAPA “may not ethically permit a corporation to represent itself pro se through an unlicensed individual”, *i.e.*, a non-lawyer. State Bar Ethics Opinion No. 000008. Generally, only a licensed Montana attorney is trained in procedural issues important to a client’s litigation such as motions, hearsay, and evidentiary challenges, which may occur during the hearing process. In addition, there is potential liability for the unauthorized practice of law in Montana, which should be considered before attempting to represent a client before the Montana Tax Appeal Board. *See Mont. Supreme Court Comm’n on Unauthorized Practice of Law v. O’Neil*, 2006 MT 284, 147 P.3d 200.

(d) Exhibits will be marked for identification, and kept by the Board as a part of the permanent record of the proceedings.

(i) If a party does not wish an original document to be made a permanent part of the Board record, that party must prepare a copy of such document and present it at the hearing together with the original document, if possible. The Board may admit the copy into the record after opportunity for examination is afforded all parties present at the hearing, and when the Board is satisfied that it is a true and correct reproduction of the original document.

(ii) Please present five (5) copies of each exhibit: one for each of the three board members, one for the opposing party and one for the official record. When possible, use double sided printing and number the pages used as exhibits.

(iii) For cases in which a pre-hearing conference was held, the parties must provide the Board with a single set of stipulated exhibits for exhibits that are anticipated to be utilized by both parties: one for the record and three for the Board members. For large regulatory filings such as FERC forms, only one copy need be submitted.

(iv) It is the Board’s general practice that the taxpayer use numbers to identify their proposed exhibits and that the Department of Revenue, or other Departments, use letters to identify their proposed exhibits. Stipulated exhibits may use either letters or numbers.

(e) All testimony shall be given under oath or affirmation. The Board will swear in witnesses before testifying.

(f) If either party wishes to use a court reporter to record the proceedings, the party must notify the Board at least three days prior to the hearing.

(g) Upon request of either party, the Board may consider designating certain materials as confidential. Confidential material shall be marked. If a request is made to access confidential material, the Board will consider the request in light of the appropriate rules, statutes, and constitutional issues. The Board will not knowingly release material deemed confidential without providing notice to the parties in a matter. The Board will also consider a request from either party to enter into a closed session during a hearing for testimony relating to confidential material. If a request is made to access a closed

session of the hearing, the Board may either hold a separate hearing on the matter, or consider the request in light of the appropriate rules, statutes, and constitutional issues.

(h) In the event of post-hearing submissions and proposed findings of fact, and conclusions of law, the parties are to submit both an electronic version (via email or CD) and a printed copy, to both the Board and the opposing party.

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